



03-24-04

#12 DACC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Hayley Korn, et al.

Serial No. : 09/248,436

Filed : February 11, 1999

For : APPARATUS FOR DISABLING A TELEPHONE RINGER

Examiner : Jeffrey F. Harold

Group Art Unit : 2644

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OFFICE OF PETITIONS

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Name:	Stephen McConaughy
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PETITION TO REVIVE ABANDONED APPLICATION

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Commissioner for Patents:

By this petition applicants respectfully request revival of the above-referenced application which was held abandoned by Paper No. 11 dated January 22, 2004. The basis for abandonment as stated in the Notice of Abandonment was "The reply received on December 4, 2003, was timely however it was non-compliant, thus the amendment was not entered and [by] the time frame to reply on December 4, 2003."

Applicants respectfully submit that their response of December 4, 2003 was substantially and essentially compliant with Patent Office Rules and Regulations, as explained below.

03/25/2004 MAHEDI 00000086 09248436

01 FC:1460 130.00 OP

Adjustment date: 07/07/2004 AKELLEY

03/25/2004 MAHEDI 00000086 09248436

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07/07/2004 AKELLEY 00000011 09248436

01 FC:2452 269120.1

55.00 OP

Repln. Ref: 07/07/2004 AKELLEY 0009130400
DAB: 011785 Name/Number: 09248436
FC: 9204 \$75.00 EX

Relevant Facts

1. There was a final office action dated June 4, 2003, which held claims 31-53 and 56-59 allowable and rejected claims 6-30, 54 and 55.

2. Applicants filed a response dated December 4, 2003 which cancelled the rejected claims 1-30, 54 and 55 by two separate statements, once on page 2 of the response in Amendment to the Claims which recited "Applicants are canceling Claims 1-30, 54 and 55" and once on page 10 of the response in Remarks which recited "... Claims 1-30, 54 and 55 have been cancelled." In the Listing of Claims applicants recited "Claims 1-30 (Cancel)" but inadvertently did not recite "Claims 54, 55 (Cancel)."

3. The Notice of Abandonment states that the failure to recite "Claims 54 , 55 (cancel)" in the Listing of Claims, resulted in non-compliance and abandonment of this application.

Discussion

Applicants respectfully submit that the omission of the recitation of "Claims 54 and 55 (cancel)" in the Listing of Claims was an inadvertent error in the nature of a typographic informality, but that applicants' intention was abundantly clear (a) from the Amendment to Claims statement "Applicants are canceling Claims 1-30, 54 and 15", and (b) from the conclusionary Remarks statement "Applicants are canceling Claims 1-30, 54 and 55 ..."

In regard to applicants' intention to cancel claims 1-30 and Claim 54 and 55, it should be noted in the Listing of Claims that applicants did recite "Claims 1-30

(Cancel),” and it was obviously an inadvertent failure to include the recitation “Claims 54, 55 Cancel” on Page 6 of the Response, between the recitations of Claims 53 and 56.

Applicants’ Response of December 4, 2003 followed all the procedural requirements to attain full compliance with the office action and the Patent Office regulations, except for this inadvertent error which omitted four words; however, applicants’ intent was unambiguously stated at the beginning and at the end of the document.

In conclusion, it is submitted that applicants’ intention was completely clear, and that abandonment of the application is a severe consequence for the circumstances described above. Accordingly, reconsideration of this application and favorable action are respectfully requested. Applicants’ check for the petition fee is enclosed.

Notwithstanding applicants’ position set forth above, applicants now enclose a substitute Response to Final Office Action (without repeat payment of fees), this substitute document including in the Listing of Claims a specific recitation that Claims 54 and 55 are cancelled, to overcome the objection to the original Response filed December 4, 2003.

If an extension of time is required to enable this document to be timely filed and there is no separate Request for Extension of Time, this document is to be construed as also constituting a Request for Extension of Time Under 37 C.F.R. §1.136(a) for a period of time sufficient to enable this document to be timely filed. Any

fee required for such a Request for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§1.16 and 1.17 and not submitted herewith should be charged to the Deposit Account of the undersigned attorneys, Account No. 01-1785; any refund should be credited to the same account. One copy of this document is enclosed.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Applicants
90 Park Avenue
New York, New York 10016
(212) 336-8000

Dated: New York, New York
March 22, 2004

By: 

J. David Dainow
Registration No. 22,959

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND											
1 Date of Request: <u>4/7/04</u>		2 Serial/Patent # <u>09/248,436</u>									
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT							
	Filing			\$							
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<input checked="" type="checkbox"/>	Petition	12	3/22/04	\$ 75.00							
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<input checked="" type="checkbox"/>	Overpayment	<input checked="" type="checkbox"/> Treasury Check									
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	No Fee Due (Explanation):	9 <table border="1" style="display: inline-table; text-align: center; width: 150px;"><tr><td>0</td><td>1</td><td>--</td><td>1</td><td>7</td><td>8</td><td>9</td></tr></table>			0	1	--	1	7	8	9
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Correct petition fee is \$55.00.											
11 REFUND REQUESTED BY:											
TYPED/PRINTED NAME: <u>Monica McLaughlin</u>			TITLE: <u>Petitions Atty.</u>								
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